

**ARTICLES OF INCORPORATION  
OF  
FOXBORO DOWNS HOMEOWNER'S ASSOCIATION**

I, the undersigned natural person of the age of twenty-one years or more, as incorporator of a Corporation, adopt the following Articles of Incorporation for such Corporation pursuant to the Commonwealth of Virginia Nonstock Corporation Act, Title 13.1, Chapter 10, Section 13.1-801, et seq., Code of Virginia 1950, as amended (hereinafter referred to as the "Nonstock Act").

**ARTICLE I - Name and Duration**

The name of the Association is Foxboro Downs Homeowner's Association (hereinafter "Association") and the period of duration of this Corporation is perpetual.

**ARTICLE II - Powers and Purposes**

(A) The purposes for which the Corporation is organized are as follows:

(1) to be and constitute the homeowners' association (hereinafter referred to as "Association") to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Foxboro Downs which was recorded in the Clerk's Office of the Circuit Court of Henrico County in Deed Book 2611, Page 644 on October 11, 1995 (hereinafter referred to as "Declaration"), as amended from time to time;

(2) to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified in the Virginia Property Owners' Association Act, Section 55-508 et seq. of the Code of Virginia, 1950, (hereinafter referred to as the "Act") and the Declaration of the Association as recorded and as amended and as otherwise provided by law; and

(3) to provide an entity for the furtherance of the interests of the owners of the property subject to the Declaration; and

(4) to exercise the powers contemplated by Section 13.1-826 of the Nonstock Act, as amended, and any other powers now or hereafter conferred by law on Virginia nonstock corporations.

(B) In furtherance of its purposes, the Association shall have the following powers, which, unless otherwise indicated by the Act or the Declaration, may be exercised by the Board of Directors:

(1) all of the powers conferred upon nonstock corporations by common law and the statutes of the Commonwealth of Virginia in effect from time to time;

(2) all powers, unless otherwise specified in the Act or the Declaration, conferred upon property owners' associations by common law and the statutes of the Commonwealth of Virginia, in effect and as amended from time to time; and

(3) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles or the Declaration, including, without limitation, the following:

(a) to fix and to collect all assessments or other charges to be levied against the Property and the Lots as more specifically described in the Declaration;

(b) to manage, control, operate, maintain, repair, and improve the common area and facilities, and any property subsequently acquired by the Corporation, or any property owned by another, for which the Corporation, by rule, regulation, or contract, has a right or duty to provide;

(c) to enforce covenants, conditions, rules or restrictions affecting any property to the extent the Corporation may be authorized to do so under the Declaration or by law;

(d) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(e) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Corporation, which shall include the power to foreclose its lien on any property subject to the Declaration by judicial or nonjudicial means;

(f) to borrow money for any purpose of the Corporation, limited in amount or in other respects as may be provided in the Declaration;

(g) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(h) to act as agent, trustee, or other representative of other corporations, firms or individuals, and as such to advance the business or ownership interests in such corporations, firms or individuals;

(i) to adopt, alter, and amend or repeal the Declaration or the Association's Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;

(j) to provide or contract for services benefitting the property subject to the Declaration, including, any and all supplemental municipal services as may be necessary and desirable;

(k) to do everything necessary and proper for the accomplishment of the above-stated objects, or necessary or incidental to the protection and benefit of the Association, and, in general, to carry out any lawful business necessary to the attainment of the

purposes of this Association, whether such business is similar in nature to the objects and powers hereinabove set forth, or otherwise.

(C) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; provided, none of the objects or purposes herein set out shall be construed to authorize the Association to do any act in violation of the Nonstock Act, and all such objects or purposes are subject to said Act. The powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article.

(D) The Association is not organized for profit, nor shall it have any power to issue certificates of stock or pay dividends, and no part of the net earnings or assets of the Association shall inure to the benefit of or be distributed, upon dissolution or otherwise, to any member of the Association, director, officer or other natural person. The Association may enter into contracts with any entity or person, and may pay compensation in reasonable amounts for services rendered.

### **ARTICLE III - Membership and Voting**

The Corporation shall be a nonstock membership Corporation without certificates or shares of stock. Each Owner, by virtue of its ownership of a Lot subject to the Declaration, including the Declarant as long as it owns a Lot subject to the Declaration, shall be a member of the Association and thereby of this Corporation. No Owner, whether one or more Persons, shall have more than one membership per Lot owned. In the event a Lot is owned by more than one Person, all such co-owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in the Bylaws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of the Declaration and the Bylaws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The foregoing does not include persons or entities, which hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessments. Any creditor of an Owner who becomes an Owner by acquiring title to a Lot pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a member of the Association. Governmental entities and tenants of Owners of Lots shall not be members of the Association.

The Association shall have the following classes of voting membership:

Class A. The Class A members shall be all Owners, including Builders, but excluding the Declarant during the Declarant Control Period, and shall be entitled to one vote for

each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant, its successors and assign which shall be entitled to twenty (20) votes for each Lot owned. There shall be no cumulative voting.

#### **ARTICLE IV - Directors**

The affairs of the Association shall be managed under the direction of a Board of Directors. The initial Board shall consist of three (3) directors appointed by the Declarant and shall serve until the Association's 2003 annual meeting. Subsequent members of the Board shall be elected and serve in accordance with the Bylaws. Directors appointed by the Declarant need not be members of the Association, however, Directors elected by the membership, in accordance with the Bylaws, shall be members of the Association. The initial members of the Board of Directors are:

William E. Goode, Sr.  
1791 Cambridge Drive  
Richmond, VA 23233

Clay Holt  
1791 Cambridge Drive  
Richmond, VA 23233

Rob Butcher  
1791 Cambridge Drive  
Richmond, VA 23233

#### **ARTICLE V - Registered Office, Registered Agent**

The address of the initial registered office of the Association is 100 Concourse Boulevard, Suite 106 Glen Allen, Virginia 23059. The name of the county in which the initial registered office is located is the County of Henrico. The name of the initial registered agent is Andrew G. Elmore, who is a resident of Virginia and a member of the Virginia State Bar and whose business address is identical with the registered office of the Association.

#### **ARTICLE VI - Mergers**

To the extent provided by law, the Association may participate in mergers with other non-profit associations in the community organized for the same purpose, provided, however, that any such mergers shall require approval by the majority vote of a quorum of at least two-thirds (2/3) of all members at a meeting duly called for such purpose.

#### **ARTICLE VII - Dissolution**

Upon dissolution of the Association, which shall be in compliance with the Nonstock Act, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this

Association was created. If such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to such similar purposes.

### ARTICLE VIII - Amendments

These Articles may be amended, pursuant to the Nonstock Act, by the affirmative vote of the Board of Directors and members holding three-fourths ( $\frac{3}{4}$ ) of the total Class "A" votes in the Association and the approval of the Class "B" Member, so long as such membership exists; provided that no amendment shall be in conflict with the Declaration, and provided further that no amendment shall impair or dilute any rights of members that are granted by the Declaration.

### ARTICLE IX - Definitions

All capitalized terms used in these Articles of Incorporation shall be defined in the same manner as defined in the Declaration, which definitions are incorporated herein by this reference.

### ARTICLE X - Limit on Liability and Indemnification

10.1. Definitions. For purposes of this Article the following definitions shall apply:

(a) "Expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(b) "Legal entity" means a corporation, partnership, joint venture, trust, employee benefit plan or other enterprise;

(c) "Liability" means the obligation to pay a judgment, settlement, penalty, fine or other such obligation, including, without limitation, any excise tax assessed with respect to an employee benefit plan; and

(d) "Proceeding" means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

10.2. Limit on Liability. In every instance permitted by the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, the liability of a director or officer of the Corporation to the Corporation or its members shall be eliminated.

10.3. Indemnification of Directors and Officers. The Corporation shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the Corporation) because such individual is or was a director or officer of the Corporation or because such individual is or was serving the Corporation or any other legal entity in any capacity at the request of the Corporation while a director or officer of the Corporation against all liabilities and reasonable expenses incurred in the proceeding, except such liabilities and expenses as are incurred because of such individual's gross negligence, willful

misconduct or knowing violation of the criminal law. Service as a director or officer of a legal entity controlled by the Corporation shall be deemed service at the request of the Corporation. The determination that indemnification under this Paragraph 10.3 is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a director, as provided by law, and in the case of an officer, as provided in Paragraph 10.4 of this Article; provided, however, that if a majority of the directors of the Corporation has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the Board of Directors and such person. Unless a determination has been made that indemnification is not permissible, the Corporation shall make advances and reimbursements for expenses incurred by a director or officer in a proceeding upon receipt of an undertaking from such director or officer to repay the same if it is ultimately determined that such director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the director or officer and shall be accepted without reference to such director's or officer's ability to make repayment. The termination of a proceeding of nolo contendere or its equivalent shall not of itself create a presumption that a director or officer acted in such a manner as to make such director or officer ineligible for indemnification. The Corporation is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its directors or officers to the same extent provided in this Paragraph 10.3.

10.4. Indemnification of Others. The Corporation may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its directors and officers pursuant to Paragraph 10.3, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the directors, officers, employees and agents of its subsidiaries, and any person serving any other legal entity in any capacity at the request of the corporation, and may contract in advance to do so. The determination that indemnification under this Paragraph 10.4 is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board of Directors, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under Paragraph 10.3 of this Article shall be limited by the provisions of this Section 10.4.

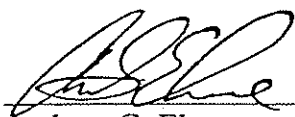
10.5. Miscellaneous. The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Corporation. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Corporation and indemnification under policies of insurance purchased and maintained by the Corporation or others. However, no person shall be entitled to indemnification by the Corporation to the extent such person is indemnified by another, including an insurer. The Corporation is authorized to purchase and

maintain insurance against any liability it may have under this Article or to protect any of the persons named herein against any liability arising from their service to the Corporation or any other legal entity at the request of the Corporation regardless of the Corporation's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Corporation from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named herein. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, this Article, and to this end the provisions of this Article are severable.

ARTICLE XI - Miscellaneous

No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

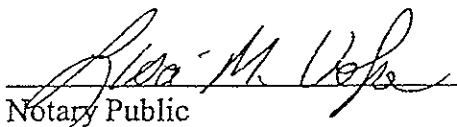
DATED: 10/10/02

  
\_\_\_\_\_  
Andrew G. Elmore  
Incorporator

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF Henrico TO-WIT:

I, a Notary Public in and for the Commonwealth of Virginia, do hereby certify that Andrew G. Elmore, who signed the foregoing Articles of Incorporation of Foxboro Downs Homeowners Association has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand and notarial seal this 10th day of October, 2002.

  
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Notary Public

My Commission Expires: 1/31/2003

# Commonwealth of Virginia



## STATE CORPORATION COMMISSION

*Richmond, October 11, 2002*

*This is to certify that the certificate of incorporation of*

**Foxboro Downs Homeowner's Association**

*was this day issued and admitted to record in this office and that the said corporation is authorized to transact its business subject to all Virginia laws applicable to the corporation and its business. Effective date: October 11, 2002*

*State Corporation Commission*

*Attest:*

*Joel H. Beck*

*Clerk of the Commission*

